

FCC MAIL SECTION

Federal Communications Commission

DA 98-99

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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-2
Table of Allotments,)	RM-9217
FM Broadcast Stations.)	
(Hawesville and Whitesville, Kentucky))	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 14, 1998;

Released: January 23, 1998

Comment Date: March 16, 1998

Reply Comment Date: March 31, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by WLME, Inc., licensee of Station WXCM(FM), Channel 246A, Hawesville, Kentucky, proposing the reallocation of Channel 246A from Hawesville to Whitesville, Kentucky, and the modification of Station WXCM(FM)'s license accordingly. Petitioner states its intention to apply for the channel, if reallocated to Whitesville.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.

See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O"). In support of its proposal, petitioner states that Whitesville is an incorporated community with a population of 682¹ persons. Whitesville is self-governing with its own city hall, mayor and city clerk. Petitioner further states that there are a number of churches, organizations, and businesses that serve the community, such as St. Mary of Woods Catholic Church, St. Mary of the Woods Grade School, Trinity High School, and Goodland Grocery Store. Many of the churches, organizations, and businesses incorporate "Whitesville" in their names, such as, Whitesville Baptist Church, Whitesville Grade School, Whitesville Fire Department, Whitesville Senior Citizens Center, Whitesville Community Credit Union, Whitesville Drug Store, Whitesville Florist, and Whitesville Tire and Auto.

¹All population figures are taken from the 1990 U.S. Census.

3. Moreover, petitioner contends that the reallocation of Channel 246A to Whitesville would result in a preferential arrangement of allotments, pursuant to Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).² Petitioner asserts that the reallocation would provide Whitesville with its first local aural transmission service, without depriving Hawesville (population 998) of its sole local aural service, since Station WKCM, a full-time AM service, would remain licensed to the community. Additionally, the reallocation of Channel 246A to Whitesville would provide 60 dBu coverage to an area of 2,526 square kilometers (769.8 square miles) with a population of 116,818 persons, while 9,358 persons would lose service, resulting in a net gain of service to 66,021 persons. However, the reallocation must serve the Commission's FM allotment priorities and policies. Since petitioner seeks to relocate its transmitter site, there will be areas which will lose existing service as well as areas which will gain new service. With respect to evaluating proposals to change the community of license, the Commission has stated: "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits may result from reallocating a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both." See Change of Community MO&O, 5 FCC Rcd at 7097. Therefore, although petitioner has provided some information concerning increases in service, it is requested that the petitioner provide more detailed information regarding gain and loss areas if Channel 246A is reallocated to Whitesville. The study should also include the number of reception services which are now available in the gain and loss areas. In addition, petitioner should provide information as to the overall public interest benefits that would be derived from the grant of this proposal. Since an engineering analysis has revealed that the reallocation of Channel 246A to Whitesville would provide a 70 dBu signal over only 16% of Owensboro, Kentucky Urbanized Area, a Tuck analysis is not necessary. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

4. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. However, we believe that the proposal warrants consideration since the reallocation of Channel 246A to Whitesville, Kentucky, could provide the community with its first local aural transmission service, without depriving Hawesville of its sole local aural service. An engineering analysis has determined that Channel 246A can be reallocated to Whitesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.9 kilometers (8.6 miles) north to accommodate petitioner's requested site.³ As requested, we shall also propose to modify Station WXCM(FM)'s license to specify operation on Channel 246A at Whitesville as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we

²The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

³The coordinates for Channel 246A at Whitesville are North Latitude 37-48-39 and West Longitude 86-53-18.

shall not accept competing expressions of interest in the use of Channel 246A at Whitesville, Kentucky.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Hawesville, Kentucky	246A	---
Whitesville, Kentucky	---	246A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before March 16, 1998, and reply comments on or before March 31, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Patricia M. Chuh
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1176 K Street, N.W., Suite 200
Washington, D.C. 20006
(Counsel for Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from

the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be